

Message Text

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ORIGIN ARA-17

INFO OCT-01 ADP-00 SCA-01 EB-11 COME-00 AID-20 OMB-01

TRSE-00 OPIC-12 CIAE-00 DODE-00 PM-09 H-02 INR-10

L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SS-15 USIA-12

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DRAFTED BY ARA/ LA/ APU: WPSTEDMAN/ KROGERS/ L/ M/ SCA: JBOYD

5/10/73 EXT. 29469; 23062

APPROVED BY L: MBFELDMAN

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TO AMEMBASSY MONTEVIDEO PRIORITY

C O N F I D E N T I A L STATE 089682

E. O. 22652: GDS

TAGS: BDIS PINT UY

SUBJECT: AMCO REPUBLIC INTERNATIONAL VS GOU MINISTRY OF
PUBLIC WORKS

REF: MONTEVIDEO 1357, 1395

1. U. S. LAWYER REPRESENTING EMB OF URUGUAY INFORMED DEPT
ON MAY 10 THAT THE US DISTRICT COURT ENTERED A DEFAULT
JUDGMENT FOR THE PLAINTIFF IN THE ABOVE ENTITLED CASE ON
MAY 7 IN THE AMOUNT OF \$402,425.26 PLUS 7 PERCENT INTEREST
AND COSTS. THE LAWYER STATED THAT HE BELIEVED THAT AN
APPEAL WAS IN ORDER CONCERNING THE QUOTE CONTACTS UNQTE
WHICH THE COURT RELIED UPON TO FIND JURISDICTION IN THIS
CASE UNDER THE CALIFORNIA QTE LONG ARM STATUTE UNQTE.
HE FURTHER STATED THAT AMB. WAS CONSIDERING REQUESTING
APPEAL WITHIN THE 30- DAY LIMIT FOLLOWING THE JUDGMENT.

2. THE DEPARTMENT HAS CONTINUOUSLY BEEN IN CLOSE TOUCH
WITH AMB. LUISI ON THIS CASE. IN ANTICIPATION OF
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POSSIBLE DEFAULT JUDGMENT, REPRESENTATIVES OF APU AND L MET ON MAY 4 WITH LUISI AND HIS LAWYER. AN EFFORT WAS MADE TO SHOW THE OPTIONS OPEN TO URUGUAY AND TO INDICATE THE LIKELY CONSEQUENCES OF VARIOUS COURSES OF ACTION.

3. WE NOTED THAT PLAINTIFF COULD ATTEMPT TO EXECUTE DEFAULT JUDGMENT AGAINST ANY COMMERCIAL PROPERTY OF THE GOU IN THE USA OR PERHAPS ELSEWHERE IN THE WORLD. IN EVENT OF ATTACHMENT IN USA, GOU MIGHT REQUEST STATE DEPARTMENT TO MAKE SUGGESTION OF SOVEREIGN IMMUNITY, AND DEPARTMENT'S RULING ON SUCH REQUEST CONCERNING ATTACHMENT WOULD NOT BE EFFECTED BY PRIOR RULING DENYING SOVEREIGN IMMUNITY ON URUGUAY'S REQUEST CONCERNING THE JURISDICTION OF THE CALIFORNIA COURT TO HEAR THIS CASE.

4. WE MENTIONED TO LUISI THAT IF URUGUAY REFUSED TO PAY DEFAULT JUDGMENT QUESTIONS WOULD NO DOUBT BE RAISED AS TO SECTION 620(C) AND (E) OF THE FOREIGN ASSISTANCE ACT, AS AMENDED, WITH WHICH HE WAS FAMILIAR, AND THAT WE MIGHT EXPECT CONGRESSIONAL INQUIRIES IN THAT RESPECT. HOWEVER, WE MADE NO EFFORT TO PERSUADE LUISI TO DEFEND THE CASE ON THE MERITS OR SETTLE THE CASE ALTHOUGH THESE POSSIBILITIES WERE MENTIONED. RATHER WE URGED HIM TO SERIOUSLY CONSIDER APPEALING THE DECISION ON THE JURISDICTIONAL QUESTION, IE, DOES THIS CONTRACT ESTABLISH ADEQUATE CONTACTS FOR THE CALIFORNIA COURT TO ASSERT JURISDICTION OVER THE GOU? SUCH AN APPEAL WOULD NOT PREJUDICE URUGUAY ON THE SOVEREIGN IMMUNITY ISSUE.

5. WE DID DISCUSS SOVEREIGN IMMUNITY AND EXPLAINED TO LUISI THAT US FOLLOWS THE RESTRICTIVE THEORY WHICH LOOKS TO THE TRANSACTIONAL NATURE OF THE ACTS AT BAR, NOT TO THEIR PURPOSE. THERE ARE CERTAIN EXCEPTIONS TO THIS APPROACH INCLUDING SPECIFICALLY CERTAIN MILITARY CONTRACTS AS IS RECOGNIZED IN THE LEGISLATION ON SOVEREIGN IMMUNITY WHICH WAS RECENTLY PRESENTED BY THE DEPARTMENT TO THE CONGRESS. LUISI REFERRED TO THE WORLD COURT, BUT DEPARTMENT REMAINED NONCOMMITTAL AND NOTED THAT FOR PRACTICAL AND LEGAL REASONS IT WOULD BE ADVISABLE TO APPEAL THIS CASE.

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6. ON MAY 7, LUISI TOLD DEPTOFF THAT HE HAD TALKED WITH URUGUAYAN LEGAL COUNSEL OF MINISTRY OF PUBLIC WORKS BY PHONE AND ASKED HIM TO REVIEW MATTER WITH FOREIGN MINISTER BLANCO. LUISI SAID HE EXPECTS FURTHER TELEPHONE CONVERSATIONS WITH URUGUAYAN AUTHORITIES THIS WEEK IN WHICH DECISION MAY BE REACHED ABOUT APPEALING

FROM DEFAULT JUDGMENT. LUISI' S CONCERN ABOUT APPEAL
IS THAT SUCH ACTION MIGHT DAMAGE URUGUAY' S CLAIM TO
IMMUNITY.

7. WE APPRECIATE FOREIGN MINISTRY EXPRESSION OF CONCERN
ABOUT POLITICAL CONSEQUENCES WHICH WOULD RESULT FROM
THE CASE. AS SITUATION NOW STANDS, IT WOULD APPEAR
THAT STEPS CAN BE TAKEN BY URUGUAYAN AUTHORITIES, AND
THAT THERE IS LITTLE ACTION THAT EXECUTIVE BRANCH OF THE
USG COULD TAKE AT THIS TIME. ROGERS

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*** Current Handling Restrictions *** n/a

*** Current Classification *** CONFIDENTIAL

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 10 MAY 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973STATE089682
Document Source: CORE
Document Unique ID: 00
Drafter: WPSTEDMAN/ KROGERS/ L/ M/ SCA: JBOYD
Enclosure: n/a
Executive Order: GDS
Errors: n/a
Film Number: n/a
From: SECSTATE WASHDC
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19730541/aaaairtz.tel
Line Count: 127
Locator: TEXT ON-LINE
Office: ORIGIN AR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 73 MONTEVIDEO 1357, 1395
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 24 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24-Jan-2002 by collinp0>; APPROVED <25 FEB 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> mcm 980123
Subject: AMCO REPUBLIC INTERNATIONAL VS GOU MINISTRY OF PUBLIC WORKS
TAGS: PINT, UY, BDIS, PINT
To: MONTEVIDEO
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005